IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14091 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FIROZ AHMED VORA-PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14091 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MRS HB PUNANI,AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat City, on 14th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is in detention as bootlegger from 17th of July, 2004 in pursuance of the above order.

2. The grounds of detention placed on record reveal that the detaining authority relied upon two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority relied upon three criminal cases registered against the petitioner, and secondly, two in-camera statements as recorded by a sponsoring authority on 9th of June 2004 and 10th of June, 2004, and verified by the detaining authority on 12th of July, 2004. In-camera statements revealing the incidents occurred on 18th of January and 22nd of February, 2004. Three criminal cases registered against the petitioner before the DCB Police Station, on 7th of February, 2004, 20th of February, 2004 and 17th of March, 2004, are under Sections 457, 380 and 114 of the Indian Penal Code whereby it was alleged that the petitioner committed theft along with others in respect of ornaments, colour TV, stablizer, cash amount, etc. The detaining authority exhaustively and thoroughly examined the investigation papers in this three criminal cases registered against the petitioner. The detaining authority also placed reliance on two in-camera statements, as aforesaid. One witness referred to the incident of 18th of January, 2004 when at about 11.00 a.m., he was present at his business place within the area of Limbayat Police Station, the petitioner and his associates approached the witness in a rickshaw and forced the witness to sell TV, tape-recorder, etc kept in the rickshaw. The witness was told that he would be paid Rs. 200/- for selling of the goods. The witness was suspicious and refused to comply and assist the petitioner in selling the said material. On such refusal, the witness was dragged out of his business place and was abused by the petitioner and his associates. The witness also stated that he would file complaint with the Police against the petitioner. On saying so, the petitioner was instigated and catching hold of the witness from his shirt collar, started beating him. On his shouts, other shop owners and the residents gathered at the place and some of them attempted to rescue the witness, but accomplices of the petitioner got down from the rickshaw with sticks, hockey, etc. and rushed towards the crowd to beat them.

Therefore, the crowd was dispersed. The traffic was disrupted. The shop owners of nearby place closed their shops and the area was terror stricken. The other witness referred to an incident of 22nd of February, 2004 when at about 8.00 p.m. while he was standing near his vehicle, the petitioner and his accomplices approached the witness and boarded the vehicle of the witness. The witness requested to vacate the vehicle. On such refusal, the petitioner and his accomplices excited and started abusing and beating the witness. On the shouts of the witness, persons gathered around and some of them attempted to rescue the witness, but on direction of the petitioner, his accomplices rushed towards the crowd with weapons like hockey, stick, iron rod etc and attempted to beat the persons in the crowd. Therefore, the crowd was dispersed. The traffic was disrupted. The shop owners closed their shops. The residents of the area closed their doors and the area was terror stricken. From the above material, the detaining authority came to the conclusion that the petitioner was headstrong and of ferocious tendencies. The petitioner was keeping with himself deadly weapons and with his accomplices continues the illegal activities and used to harass the innocent citizens, who refused to cooperate in his illegal activity of the petitioner. The detaining authority also came to the conclusion that due to apprehension and fear of the petitioner, nobody dare to file any complaint. The detaining authority reached to the subjective satisfaction that the activity of the petitioner was disturbing the maintenance of public order and his activities being was of a dangerous person within the meaning of the said Act, the activities were required to be prevented forthwith. Therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Mr. Kamlesh Kachhvah for the petitioner and learned AGP Mrs. H.B. Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of only on the ground that whether the order of detention was vitiated on account of delay caused in passing the order.

6. Undoubtedly, from the grounds of detention as placed on record, the detaining authority has reached to

the subjective satisfaction that the petitioner was engaged in anti-social and illegal activities prejudicial to the maintenance of public order. In view of the detaining authority, this activity was required to be prevented forthwith and except detention of the accused all other remedies available in general law was not effective because it was likely to take time. It is the principle of law that when delay has been caused in passing the order of detention, the same becomes fatal to the order of detention. In other words, the live link between the prejudicial activities of the detenu is snapped. The delay in passing the order of detention snaps the live link between the prejudicial activities, and imminent necessity to shun the alleged activities forthwith and, therefore, the delay caused in passing the order of detention is fatal for detention. Though each case depends upon the facts and circumstances of the same case and the courts are required to scrutinise the circumstances.

7. Reverting back to the facts of this case, the grounds of detention disclosed that last criminal offences came to be registered against the petitioner on 17.3.2004. Thereafter, on 9th and 10th of June, 2004, sponsoring authority recorded incamera statements of the witnesses. Those statements referred to the incident taken place on 8th of June, 2004 and 22nd of February, 2004. In-camera statements were verified by the detaining authority on 12th of July, 2004 and order of detention came to be passed on 14th of July, 2004. If we take the date on which last offence came to be registered against the petitioner on 17th of March, 2004, then the order of detention came to be passed after about four months i.e. on 14th of July, 2004. In between though the sponsoring authority recorded the statements of the witnesses, whose identity is not disclosed. There is some force in the contention of the petitioner that to give live link to stale case an attempt has been made to record the incamera statements by the sponsoring authority though they referred to the incident occurred on 18th of January, 2004 and 22nd of February, 2004. Therefore, the facts of this case are covered by the decision of this court in the matter ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, as reported in 1997 (1) GLH 391 wherein this Court was pleased to observe that two unregistered cases were referred only with a view to cover up the gap or to give live to a stale case. After relying on a decision of the Apex Court in the matter of PRAKASH vs. STATE OF U.P., reported in AIR 1990 SC 519 and in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in AIR 1994 SC

656, this Court was pleased to quash the order of detention on the ground of delay. In the said case, the last registered case against the detenu was dated May 20, 1996 and the order of detention was dated November 05, 1996 i.e. after a delay of 5 months and 15 days. In between, in that case also, the detaining authority relied on two incidents of 2nd of October, and 10th of October, 1996, both unregistered cases. While in the present case, the unregistered incidents are the incidents of even before filing of criminal cases, only the statements of witnesses came to be recorded on 9th of June 2004 and 10th of June, 2004 by the sponsoring authority. Thus, there is a delay of about four months in passing the order of detention in this case, snapping the live link between the prejudicial activities of the petitioner and the order of detention. The order under challenge is, therefore, vitiated and is required to be set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by Commissioner of Police, Surat City, on 14th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Firoz Ahmed Vora-Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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